

A Mohamad Habizan bin Mohamad Yussof (claiming as nominee for the Family Takaful Benefit under Abdul Razak bin Noor Mohamad, deceased) v Prudential BSN Takaful Bhd

B HIGH COURT (KUALA LUMPUR) — CIVIL SUIT
NO WA-22NCC-305-06 OF 2022
ATAN MUSTAFFA J
7 AUGUST 2025

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Insurance — Duty of disclosure — Material non-disclosure — Breach of duty of utmost good faith — Plaintiff as nominee filed claim under ‘Sijil Takaful Keluarga PruBSN WarisanPlus’ (‘certificate’) — Insurer rejected plaintiff’s claim due to misrepresentations and/or non-disclosure of material facts by deceased in proposal form — Whether deceased made deliberate or reckless misrepresentations of material facts in proposal form regarding his annual income and occupation/company — Whether misrepresentations were sufficiently material to entitle insurer to avoid certificate ab initio — Whether insurer established that deceased misrepresented the source of takaful contribution or his alcohol consumption — Whether insurer established applicability of any of the exclusion clauses under certificate — Whether plaintiff’s failure to provide additional documents requested by insurer constituted breach that would justify insurer in not processing plaintiff’s claim — Whether deceased’s misrepresentations constituted breach of duty of utmost good faith — Islamic Financial Services Act 2013 Schedule 9, paras 5(2), (8), 7(4) & 15(1)

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G The present case concerned the duty of utmost good faith in takaful contracts. The deceased had applied for takaful coverage from Prudential BSN Takaful Sdn Bhd (‘the defendant’) via a proposal form dated 23 July 2020 (‘the proposal form’). Based on the information provided in the proposal form, the defendant issued a certificate known as ‘Sijil Takaful Keluarga PruBSN WarisanPlus’ (‘the certificate’). The plaintiff, who was the adopted son of the deceased, was named as the nominee/beneficiary under the certificate. The certificate provided for a death benefit of RM1.5m, with an additional RM1.5m payable in the event of accidental death. Subsequently, merely 20 days after the issuance of the certificate, the deceased passed away after falling from the 17th floor of a building where he resided. The post-mortem report showed that the presence of alcohol and a prescription drug called Chloroquine in the deceased’s system.

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I The plaintiff then made a claim under the certificate for a total sum of RM3m but such claim was rejected by the defendant on the grounds that the certificate was void ab initio due to misrepresentations and/or non-disclosure of material facts by the deceased in the proposal form. Aggrieved with the rejection, the plaintiff filed the present claim. The plaintiff argued that the certificate was

marked under Part A of the common bundle of documents, meaning its authenticity and contents were admitted and could not be challenged ('the plaintiff's argument regarding Part A documents'). Regarding this argument, the defendant contended that while the certificate's inclusion in Part A acknowledged its authenticity and contents, this did not determine its enforceability, which was precisely the issue to be determined by the court. The plaintiff had also submitted that adverse inference should be drawn against the defendant under s 114(g) of the Evidence Act 1950 for multiple failures to produce evidence including evidence of Miss Sok Kwan (regarding who was the highest authority for underwriting decision). Regarding the alleged misrepresentations, the defendant argued that the deceased misrepresented: (a) his annual income, which he claimed was RM450,000; (b) his employment status and company, declaring he was self-employed under 'Nesh Electrician'; (c) the source of the takaful contribution payment, which came from the plaintiff's account rather than the deceased's account as declared; and (d) his consumption of alcohol, which he denied in the proposal form. Alternatively, the defendant argued that even if the certificate was valid, the claim for accidental death benefit was excluded under cll 2.4.1(f), 2.4.1(h), and/or 2.4.1(c) of the certificate due to: (i) the presence of Chloroquine in the deceased's system without evidence of a doctor's prescription; (ii) the presence of alcohol in the deceased's blood at levels exceeding the legal limit for driving; and/or (iii) circumstances suggesting the death may have been self-inflicted or resulted from reckless exposure to danger. In addition, the defendant submitted that the plaintiff failed to provide additional documents requested under cl 12.7.1 of the certificate, which was a prerequisite for claim assessment.

Held, dismissing the plaintiff's claim with costs of RM25,000 to the defendant:

- (1) To accept the plaintiff's argument regarding Part A documents would lead to an absurd result whereby a party could shield a legally defective contract from judicial scrutiny merely by agreeing to include it in Part A. This would undermine the court's fundamental role in determining substantive legal rights and obligations according to established principles of law. Therefore, while the certificate's existence and contents were not in dispute, its enforceability remained a triable issue, as correctly identified in the agreed issues before the court in the present case. The defendant was not precluded from challenging the certificate's validity on grounds of misrepresentation or non-disclosure of material facts (see paras 33–34).
- (2) It was trite law that takaful contracts, like insurance contracts, were contracts of utmost good faith. This principle was codified in para 5(2) and 5(8) Schedule 9 of the Islamic Financial Services Act 2013 ('the IFSA'). The court acknowledged that takaful operators also had obligations of good faith but these did not extend to an obligation to

- A independently verify all information provided by proposers. The law placed the primary duty of disclosure on the proposer, who possessed exclusive knowledge of their personal circumstances. In the present case, the defendant was entitled to rely on the deceased's declarations in the proposal form, and had no legal obligation to verify these declarations before issuing the certificate. The defendant's subsequent discovery of misrepresentations after the deceased's passing did not constitute a breach of the duty of good faith on their part (see paras 38–39 & 43).
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- C (3) The court found that the deceased made deliberate or reckless misrepresentations of material facts (within the meaning of para 7(4) Schedule 9 of the IFSA) in the proposal form, specifically regarding his annual income and occupation/company. These two misrepresentations alone were sufficiently material to the defendant's assessment of risk. The annual income directly impacted the affordability and sustainability of the takaful contributions, while the occupation and business details influenced the risk profile assessment, both critical factors in the defendant's underwriting decision. The court opined that these two misrepresentations, though fewer than alleged by the defendant, were sufficiently material to entitle the defendant to avoid the certificate ab initio under para 15(1) Schedule 9 of the IFSA and cll 12.1.4, 12.8.2, and 12.8.3 of the certificate (see paras 54, 64, 78, 82, 84–85 & 132).
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- F (4) The fact that only a single payment was made before the deceased's passing did not establish a pattern or trend sufficient to conclude that the deceased misrepresented the source of funds. Had the deceased lived longer and made multiple payments from the plaintiff's account, this might have constituted a misrepresentation. However, on the evidence before the court, the court could not conclusively find that the deceased misrepresented the source of the takaful contribution in the proposal form (see paras 68 & 132).
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- H (5) From a linguistic perspective, the term 'consume' in question 4.1 in the proposal form was ambiguous. In ordinary usage, asking whether someone, 'Do you consume alcohol?' typically implied habitual or regular consumption, not a single instance of drinking. The Malay phrase 'ada meminum alkohol' used during cross-examination was equally ambiguous — it could refer to a single instance or habitual consumption. The evidence only established that the deceased had alcohol in his system at the time of death and that he may have consumed alcohol on at least one occasion. This did not necessarily contradict his answer in the proposal form if the question was understood to inquire about regular or habitual consumption. Given these linguistic ambiguities and the lack of conclusive evidence about the deceased's alcohol consumption habits at the time of the proposal, the court could not find with sufficient certainty
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- that the deceased misrepresented his alcohol consumption in the proposal form (see paras 71–73 & 132). A
- (6) On a balance of probabilities, the court found that the defendant had not established that: (a) the deceased's death was 'caused by' taking drugs or narcotics without prescription — in this regard, the mere presence of Chloroquine in the deceased's system, without evidence of causation, was insufficient to trigger the exclusion under cl 2.4.1(f) of the certificate; B
(b) the deceased's death was caused by alcohol and drugs intoxication — the mere presence of these substances in his system, without evidence of intoxication and causation, was insufficient to trigger the exclusion under cl 2.4.1(h) of the certificate; and (c) the deceased's death was caused by attempted suicide or self-inflicted injuries within the meaning of cl 2.4.1(c) of the certificate — in this regard, the suspicious circumstances cited by the defendant were insufficient to establish attempted suicide or self-inflicted injuries (see paras 92, 98, 101–102, 107 & 132). C D
- (7) Based on cl 7.3.2 of the certificate as well as the plaintiff's own admission during cross-examination that he understood the *khairat* benefit payment did not automatically mean the rest of the claim would be paid, the court found that the payment of the *khairat* benefit did not estop the defendant from avoiding the certificate or declining the death claim (see paras 109–111). E
- (8) While the court accepted that the plaintiff may not have had access to all the requested documents, particularly given that he was not the deceased's heir but merely a nominee under the certificate, his failure to make reasonable efforts to obtain and provide the requested documents constituted a breach of cl 12.7.1. Therefore, even if the certificate had been valid and the claim had not been excluded, the defendant would have been justified in not processing the claim due to the plaintiff's failure to comply with cl 12.7.1 (see paras 115–116). F G
- (9) The court found that the plaintiff's arguments for adverse inference regarding both Miss Sok Kwan and the missing documents lacked merit. The plaintiff had failed to establish that this evidence would be material to resolving the legal issues, had not demonstrated that the contents would differ from oral testimony provided, and had not shown improper withholding rather than legitimate case presentation choices. The court was satisfied that the evidence before it sufficiently determined the substantive issues without requiring adverse inferences regarding the complained evidence (see para 131). H I
- (10) In conclusion, although the defendant did not establish all elements of its defence, the two material misrepresentations regarding annual income and business entity were sufficient grounds to void the certificate ab

- A initio. The duty of utmost good faith was fundamental to takaful contracts, and the deceased's misrepresentations on these two material points constituted a breach of this duty (see para 133).

[Bahasa Malaysia summary]

- B Kes semasa adalah berkaitan dengan kewajipan penuh percaya mutlak dalam kontrak takaful. Si mati telah memohon perlindungan takaful daripada Prudential BSN Takaful Sdn Bhd ('defendan') melalui borang cadangan bertarikh 23 Julai 2020 ('borang cadangan'). Berdasarkan maklumat yang diberikan dalam borang cadangan, defendan telah mengeluarkan sijil yang dikenali sebagai 'Sijil Takaful Keluarga PruBSN WarisanPlus' ('sijil tersebut').
- C Plaintiff, yang merupakan anak angkat si mati, telah dinamakan sebagai penama/benefisiari di bawah sijil tersebut. Sijil tersebut memperuntukkan faedah kematian sebanyak RM1.5 juta, dengan tambahan RM1.5 juta yang perlu dibayar sekiranya berlaku kematian akibat kemalangan. Setelah itu,
- D hanya 20 hari selepas pengeluaran sijil tersebut, si mati meninggal dunia selepas jatuh dari tingkat 17 bangunan tempat tinggalnya. Laporan bedah siasat menunjukkan bahawa kehadiran alkohol dan ubat preskripsi yang dipanggil Klorokuin dalam system tubuh si mati. Plaintiff kemudian membuat tuntutan di bawah sijil tersebut dengan jumlah keseluruhan RM3 juta tetapi
- E tuntutan tersebut ditolak oleh defendan atas alasan sijil tersebut terbatal secara ab initio disebabkan oleh salah nyata dan/atau kegagalan mendedahkan fakta penting oleh si mati dalam borang cadangan. Terkilan dengan penolakan tersebut, plaintiff memfailkan tuntutan semasa. Plaintiff berhujah bahawa sijil tersebut ditanda di bawah Bahagian A ikatan dokumen bersama, yang
- F bermaksud kesahihan dan kandungannya telah diterima dan tidak boleh dicabar ('hujah plaintiff mengenai dokumen Bahagian A'). Berkenaan hujah ini, defendan berhujah bahawa walaupun kemasukan sijil tersebut dalam Bahagian A berjumlah kepada pengakuan tentang kesahihan dan kandungannya, ini tidak menentukan kebolehkuaatkuasaannya, yang merupakan isu yang akan
- G ditentukan oleh mahkamah. Plaintiff juga berhujah bahawa inferens bertentangan harus dibuat terhadap defendan di bawah s 114(g) Akta Keterangan 1950 atas pelbagai kegagalan untuk mengemukakan keterangan termasuk keterangan Cik Sok Kwan (berkenaan siapa yang mempunyai kuasa tertinggi untuk keputusan pengunderaitan). Berkenaan dakwaan salah nyata,
- H defendan berhujah bahawa si mati telah salah nyata: (a) pendapatan tahunannya, yang didakwanya ialah RM450,000; (b) status pekerjaan dan syarikatnya, mengisytiharkan bahawa dia bekerja sendiri di bawah 'Nesh Electrician'; (c) sumber pembayaran caruman takaful, yang datang daripada akaun plaintiff dan bukannya akaun si mati seperti yang diisytiharkan; dan
- I (d) pengambilan alkoholnya, yang dinafikannya dalam borang cadangan. Secara alternatif, defendan berhujah bahawa walaupun sijil tersebut sah, tuntutan untuk faedah kematian akibat kemalangan dikecualikan di bawah klausa 2.4.1(f), 2.4.1(h), dan/atau 2.4.1(c) sijil tersebut disebabkan oleh: (i) kehadiran Klorokuin dalam sistem si mati tanpa bukti preskripsi doktor; (ii)

kehadiran alkohol dalam darah si mati pada tahap yang melebihi had sah untuk memandu; dan/atau (iii) keadaan yang menunjukkan kematian mungkin disebabkan oleh diri sendiri atau disebabkan oleh pendedahan melulu kepada bahaya. Di samping itu, defendan berhujah bahawa plaintif gagal memberikan dokumen-dokumen tambahan yang diminta di bawah klausa 12.7.1 sijil tersebut, yang merupakan prasyarat untuk penilaian tuntutan.

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Diputuskan, menolak tuntutan plaintif dengan kos sebanyak RM25,000 kepada defendan:

- (1) Penerimaan hujah plaintif mengenai dokumen Bahagian A akan membawa kepada keputusan yang tidak masuk akal di mana sesuatu pihak boleh melindungi kontrak yang cacat dari segi undang-undang daripada penelitian kehakiman hanya dengan bersetuju untuk memasukkannya ke dalam Bahagian A. Ini akan menjejaskan peranan asas mahkamah dalam menentukan hak dan obligasi undang-undang yang substantif mengikut prinsip undang-undang yang telah ditetapkan. Oleh itu, walaupun kewujudan dan kandungan sijil tersebut tidak dipertikaikan, kebolehuatkuasaannya kekal sebagai isu yang boleh dibicarakan, seperti yang dikenal pasti dengan betul dalam isu-isu yang dipersetujui di hadapan mahkamah dalam kes semasa. Defendan tidak dihalang daripada mencabar kesahihan sijil atas alasan salah nyata atau kegagalan mendedahkan fakta penting (lihat perenggan 33–34).
- (2) Adalah menjadi undang-undang yang mantap bahawa kontrak takaful, seperti kontrak insurans, adalah kontrak penuh percaya mutlak. Prinsip ini telah dikodifikasikan dalam perenggan 5(2) dan 5(8) Jadual 9 Akta Perkhidmatan Kewangan Islam 2013 ('APKI'). Mahkamah mengakui bahawa pengendali takaful juga mempunyai obligasi penuh percaya tetapi ini tidak meliputi obligasi untuk mengesahkan sendiri semua maklumat yang diberikan oleh pencadang. Undang-undang meletakkan kewajipan utama pendedahan ke atas pencadang, yang mempunyai pengetahuan eksklusif tentang keadaan peribadi mereka. Dalam kes ini, defendan berhak untuk bergantung pada pengisytiharan si mati dalam borang cadangan, dan tidak mempunyai obligasi undang-undang untuk mengesahkan pengisytiharan ini sebelum mengeluarkan sijil tersebut. Penemuan salah nyata defendan selepas kematian si mati tidak berjumlah kepada pelanggaran kewajipan penuh percaya di pihak mereka (lihat perenggan 38–39 & 43).
- (3) Mahkamah mendapati bahawa si mati telah melakukan salah nyata fakta penting secara sengaja atau melulu (dalam maksud perenggan 7(4) Jadual 9 APKI) dalam borang cadangan, khususnya mengenai pendapatan tahunan dan pekerjaan/syarikatnya. Dua salah nyata ini sahaja sudah cukup penting untuk penilaian risiko defendan. Pendapatan tahunan memberi kesan langsung kepada kemampuan dan kemampuan

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- A caruman takaful, manakala butiran pekerjaan dan perniagaan mempengaruhi penilaian profil risiko, kedua-duanya faktor kritikal dalam keputusan pengunderaitan defendan. Mahkamah berpendapat bahawa dua salah nyata ini, walaupun kurang daripada yang didakwa oleh defendan, sudah cukup penting untuk memberi hak kepada
- B defendan untuk membatalkan sijil tersebut ab initio di bawah perenggan 15(1) Jadual 9 APKI dan klausa 12.1.4, 12.8.2, dan 12.8.3 sijil tersebut (lihat perenggan 54, 64, 78, 82, 84–85 & 132).
- C (4) Hakikat bahawa hanya satu pembayaran dibuat sebelum kematian si mati tidak mewujudkan corak atau trend yang mencukupi untuk menyimpulkan bahawa si mati telah salah nyata sumber dananya. Sekiranya si mati hidup lebih lama dan membuat beberapa pembayaran daripada akaun plaintif, ini mungkin merupakan satu salah nyata. Walau bagaimanapun, berdasarkan keterangan di hadapan mahkamah, mahkamah tidak dapat secara muktamad mendapati bahawa si mati salah nyata sumber sumbangan takaful dalam borang cadangan tersebut (lihat perenggan 68 & 132).
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- E (5) Dari perspektif linguistik, istilah ‘consume’ dalam soalan 4.1 borang cadangan tersebut adalah samar-samar. Dalam penggunaan biasa, bertanya kepada seseorang, ‘Do you consume alcohol?’ biasanya menyiratkan pengambilan secara lazim atau tetap, bukan sekali minum sahaja. Frasa Melayu ‘ada meminum alkohol’ yang digunakan semasa pemeriksaan balas juga samar-samar — ia boleh merujuk kepada satu kali atau pengambilan secara lazim. Keterangan hanya membuktikan bahawa si mati mempunyai alkohol dalam sistemnya pada masa kematian dan dia mungkin telah mengambil alkohol sekurang-kurangnya sekali. Ini tidak semestinya bercanggah dengan jawapannya dalam borang cadangan jika soalan itu difahami untuk bertanya tentang pengambilan secara lazim atau tetap. Memandangkan kekaburan linguistik ini dan kekurangan keterangan konklusif tentang tabiat pengambilan alkohol si mati pada masa cadangan tersebut dibuat, mahkamah tidak dapat membuat dapatan dengan kepastian yang mencukupi bahawa si mati telah membuat salah nyata tentang pengambilan alkoholnya dalam borang cadangan tersebut (lihat perenggan 71–73 & 132).
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- I (6) Di atas imbalan kebarangkalian, mahkamah mendapati bahawa defendan tidak membuktikan bahawa: (a) kematian si mati ‘disebabkan oleh’ pengambilan dadah atau narkotik tanpa preskripsi — dalam hal ini, kehadiran Klorokuin dalam sistem si mati, tanpa keterangan sebab-akibat, tidak mencukupi untuk mencetuskan pengecualian di bawah klausa 2.4.1(f) sijil tersebut; (b) kematian si mati disebabkan oleh mabuk alkohol dan dadah — kehadiran bahan-bahan ini dalam sistemnya, tanpa keterangan mabuk dan sebab-akibat, tidak mencukupi untuk mencetuskan pengecualian di bawah klausa 2.4.1(h) sijil tersebut;

- dan (c) kematian si mati disebabkan oleh percubaan bunuh diri atau kecederaan yang dilakukan sendiri mengikut maksud klausa 2.4.1(c) sijil tersebut — dalam hal ini, keadaan mencurigakan yang disebut oleh defendan tidak mencukupi untuk membuktikan percubaan bunuh diri atau kecederaan yang dilakukan sendiri (lihat perenggan 92, 98, 101–102, 107 & 132)
- (7) Berdasarkan klausa 7.3.2 sijil tersebut serta pengakuan plaintif sendiri semasa pemeriksaan balas bahawa dia memahami yang pembayaran faedah khairat tidak secara automatik bermaksud baki tuntutan akan dibayar, mahkamah mendapati bahawa pembayaran faedah khairat tidak menghalang defendan daripada membatalkan sijil tersebut atau menolak tuntutan kematian (lihat perenggan 109–111).
- (8) Walaupun mahkamah bersetuju bahawa plaintif mungkin tidak mempunyai akses kepada semua dokumen yang diminta, terutamanya memandangkan dia bukan waris si mati tetapi hanya seorang penama di bawah sijil tersebut, kegagalannya untuk membuat usaha yang munasabah untuk mendapatkan dan menyediakan dokumen yang diminta merupakan pelanggaran klausa 12.7.1. Oleh itu, jika pun sijil tersebut sah dan tuntutan tersebut tidak dikecualikan, defendan mempunyai justifikasi untuk tidak memproses tuntutan tersebut disebabkan oleh kegagalan plaintif untuk mematuhi klausa 12.7.1 (lihat perenggan 115–116).
- (9) Mahkamah mendapati bahawa hujah plaintif untuk inferens bertentangan mengenai Cik Sok Kwan dan ketiadaan beberapa dokumen tersebut tidak mempunyai merit. Plaintif telah gagal membuktikan bahawa keterangan-keterangan ini adalah penting untuk menyelesaikan isu-isu undang-undang, gagal menunjukkan bahawa kandungannya akan berbeza daripada keterangan lisan yang diberikan, dan gagal menunjukkan penahanan yang tidak wajar dan bukannya pilihan pembentangan kes yang sah. Mahkamah berpuas hati bahawa keterangan di hadapannya telah menentukan isu-isu substantif dengan secukupnya tanpa memerlukan inferens bertentangan mengenai keterangan yang diadukan (lihat perenggan 131).
- (10) Kesimpulannya, walaupun defendan tidak membuktikan semua elemen pembelaannya, dua salah nyata material mengenai pendapatan tahunan dan entiti perniagaan tersebut adalah alasan yang mencukupi untuk membatalkan sijil tersebut ab initio. Kewajipan penuh percaya mutlak adalah asas kepada kontrak takaful, dan salah nyata si mati mengenai dua perkara material ini merupakan pelanggaran kewajipan ini (lihat perenggan 133).]
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A Cases referred to

Eso Malaysia Bhd v Hills Agency (M) Sdn Bhd & Ors [1994] 1 MLJ 740, HC (refd)

Great Eastern Life Assurance (M) Bhd v Poobalan all Rajah [2019] 10 MLJ 1; [2019] 10 CLJ 353, HC (folld)

B *Jamilah bt Hj Ali & Anor v Bank Simpanan Nasional & Anor* [2020] 7 MLJ 314, CA (refd)

Leong Kum Whay v Qbe Insurance (M) Sdn Bhd Ors [2005] 2 MLRA 380, CA (refd)

C *Munusamy v PP* [1987] 1 MLJ 492, SC (refd)

Newsholme Brothers v Road Transport And General Insurance Company, Limited [1929] 2 KB 356, CA (refd)

Pacific & Orient Insurance Co Sdn Bhd v Kathirvelu [1992] 1 MLJ 249, SC (refd)

D *Provincial Insurance Co Ltd v Yeo Chee Swee* [1984] 2 MLJ 60; [1984] 1 MLRA 227, FC (refd)

Raja Lob Sharuddin bin Raja Ahmad Terzali & Ors v Sri Seltra Sendirian Bhd [2008] 2 MLJ 87; [2007] 3 MLRA 224, CA (refd)

Siva Prakash all Ramasamy (as executor and trustee for the estate of Jachiswaran all Duroy Selvam) v MCIS Insurance Bhd [2024] MLJU 219, HC (refd)

E *Tan Kang Hua v Safety Insurance Co* [1973] 1 MLJ 6, FC (refd)

Thiagarajan S Rengasamy & Ors v Sri Ganes Palaniapan [2024] MLJU 3822; [2024] 2 MLRH 469, HC (refd)

F Legislation referred to

Evidence Act 1950 ss 92, 93, 114(g)

Islamic Financial Services Act 2013 Schedule 9, paras 5(2), (8), 7(4), (8), 15(1), (2)

Registration of Businesses Act 1956 s 12

Road Transport (Amendment) Act 2020

G Road Transport Act 1987 s 45G

Rules of Court 2012 O 34 r 2(2)(d)

Haizam Fitri bin Abdul Jalil (Hafizul & Haizam) for the plaintiff.

Tan Sixin (with Asha Mohan) (Azim, Tunku Farik & Wong) for the defendant.

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Atan Mustaffa J:

INTRODUCTION

I [1] Here is a tale stranger than fiction, yet grimly real. Abdul Razak bin Noor Mohamad approaches an insurance agent with a most peculiar and specific question: ‘What if there’s an accidental death from falling off a building?’. The agent, perhaps thinking nothing of it, confirms he would be covered. Abdul Razak then takes out a policy on his life — a substantial policy worth millions.

20 days later, he falls from the 17th floor of a building and dies. The agent herself testified that such a targeted question was rather unusual for someone buying a policy. Yet for all its dramatic peculiarity, this case does not turn on these extraordinary circumstances alone, but on the more prosaic — though no less vital — questions of what the contract says and what it means.

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[2] The law of insurance, like all good law, must look beyond the sensational to the fundamental: what did the parties agree? On one side stands the adopted son — the plaintiff who trusted that this policy would provide security — clutching the certificate document and pointing to its plain terms which promise payment upon accidental death. On the other side stands the mighty insurance company, with its battalions of lawyers wielding the sword of misrepresentation, crying that the very foundation of the contract is rotten — that Abdul Razak overstated his income, fabricated his business, and deceived them about who would pay the premiums. They say the contract should be torn up as if it never existed, because it was built on falsehoods. The court must decide not whether Abdul Razak was a prophet of his own doom, but whether he told the truth when he sought coverage, and whether any alleged misrepresentations were material enough to justify the insurers walking away from their promises. These are the eternal questions of contract law — what did the words mean when written, and what do they mean when tested by the harsh realities of human tragedy?

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BACKGROUND FACTS

[3] The deceased, Abdul Razak bin Noor Mohamad, applied for Takaful coverage from the defendant through a proposal form dated 23 July 2020 (‘the proposal form’). Based on the information provided in the proposal form, the defendant, Prudential BSN Takaful Sdn Bhd, issued a certificate known as ‘Sijil Takaful Keluarga PruBSN WarisanPlus No 87265644’ (‘the certificate’). The plaintiff, Mohamad Habizan bin Mohamad Yussof, was named as the nominee/beneficiary under the certificate. According to the plaintiff, he was the adopted son of the deceased.

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[4] The certificate provided for a death benefit of RM1.5m, with an additional RM1.5m payable in the event of accidental death.

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[5] Merely 20 days after the issuance of the certificate, on 17 August 2020, the deceased passed away after falling from the 17th floor of a building where he resided. The post mortem report revealed the presence of alcohol (approximately 67mg per 100ml of blood) and a prescription drug called Chloroquine in the deceased’s system.

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[6] Following the deceased’s demise, the plaintiff, as nominee, made a claim

A under the certificate for a total of RM3m (comprising both the death benefit and the accidental death benefit).

[7] On 14 July 2021, the defendant paid the plaintiff a sum of RM3,113.51 as *khairat* benefit under the certificate.

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[8] However, by a letter dated 18 April 2022, the defendant declined the plaintiff's claim, asserting that the certificate was void ab initio due to misrepresentations and/or non-disclosure of material facts by the deceased in the proposal form. The defendant also raised alternative grounds for rejecting the claim, particularly in relation to the accidental death benefit.

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THE PLAINTIFF'S CASE

D [9] The plaintiff contends that the certificate is valid and enforceable. He argues that the deceased had fulfilled his duty of utmost good faith by providing all necessary information requested by the defendant. The plaintiff further submits that the defendant had examined and approved the proposal with full knowledge of the information provided, and therefore should be estopped from challenging the validity of the certificate.

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[10] Regarding the alleged misrepresentations, the plaintiff argues that: (a) the annual income of RM450,000 was questioned by the defendant's underwriter during the application process, yet the application was approved, constituting waiver or estoppel; (b) the business 'Nesh Electrician' did exist, albeit unregistered with the Companies Commission of Malaysia ('CCM'); (c) while the takaful contribution was paid from the plaintiff's bank account, it was the deceased who controlled the transaction due to technical difficulties with his own account; and (d) there is no evidence that the deceased consumed alcohol at the time of applying for the certificate.

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[11] The plaintiff also maintains that the deceased's death was accidental, as confirmed by the police and post mortem reports. He contends that if the defendant wanted to prove otherwise, they should have produced expert witnesses to rebut the police and medical evidence.

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THE DEFENDANT'S CASE

[12] The defendant's position is that the certificate is void ab initio due to the deceased's non-disclosure and/or misrepresentation of material facts in the proposal form. Specifically, the defendant alleges that the deceased misrepresented: (a) his annual income, which he claimed was RM450,000; (b) his employment status and company, declaring he was self-employed under 'Nesh Electrician'; (c) the source of the takaful contribution payment, which

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came from the plaintiff's account rather than the deceased's account as declared; and (d) his consumption of alcohol, which he denied in the proposal form.

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[13] Alternatively, the defendant argues that even if the certificate is valid, the claim for accidental death benefit is excluded under cll 2.4.1(f), 2.4.1(h), and/or 2.4.1(c) of the certificate due to: (a) the presence of Chloroquine in the deceased's system without evidence of a doctor's prescription; (b) the presence of alcohol in the deceased's blood at levels exceeding the legal limit for driving; and/or (c) circumstances suggesting the death may have been self-inflicted or resulted from reckless exposure to danger.

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[14] Further, the defendant submits that the plaintiff failed to provide additional documents requested under cl 12.7.1 of the certificate, which is a prerequisite for claim assessment.

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THE PLAINTIFF'S SUBMISSIONS

[15] The plaintiff submitted that the certificate was marked under Part A of the common bundle of documents, meaning its authenticity and contents are admitted and cannot be challenged. He cited the cases of *Thiagarajan S Rengasamy & Ors v Sri Ganes Palaniapan* [2024] MLJU 3822; [2024] 2 MLRH 469 (HC) and *Raja Lob Sharuddin bin Raja Ahmad Terzali & Ors v Sri Seltra Sendirian Bhd* [2008] 2 MLJ 87; [2007] 3 MLRA 224 (CA) to support his contention that the defendant is bound by the certificate's terms and estopped from challenging its validity.

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[16] On the principle of utmost good faith, the plaintiff argued that this duty applies to both the proposer and the takaful operator. He relied on *Leong Kum Whay v Qbe Insurance (M) Sdn Bhd Ors* [2005] 2 MLRA 380 (CA) to assert that the defendant had a reciprocal duty to act with utmost good faith, which included a duty to properly investigate the proposal details. The plaintiff contended that the defendant breached this duty by approving the proposal despite having doubts about the information provided.

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[17] Regarding the alleged misrepresentations, the plaintiff submitted that: (a) the defendant's underwriter had seen and approved the RM450,000 annual income despite finding it questionable; (b) 'Nesh Electrician' existed as an unregistered business, which was confirmed by both the CCM witness and the plaintiff's testimony; (c) the payment from the plaintiff's account was initiated by the deceased who had temporary control over it due to technical difficulties with his own bank; and (d) there was no evidence of alcohol consumption at the time of application, and the deceased had shown honesty by asking whether he needed to declare being an ex-smoker.

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- A [18] The plaintiff further submitted that the police and medical evidence clearly established accidental death, and the defendant had failed to produce any expert testimony to contradict this finding. He also argued that the requirements to provide additional documents after the claim was lodged were unreasonable and should have been requested at the application stage.

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THE DEFENDANT'S SUBMISSIONS

- C [19] The defendant submitted that while the certificate's inclusion in Part A acknowledges its authenticity and contents, this does not determine its enforceability, which is precisely the issue to be determined by the court. The defendant contended that proving any one of the four alleged material misrepresentations would justify avoiding the certificate from inception.

- D [20] On the annual income misrepresentation, the defendant pointed to the plaintiff's own admission during trial that the deceased did not earn RM450,000 annually, which was corroborated by Inland Revenue Board ('LHDN') records showing the deceased was not a registered taxpayer. For the 'Nesh Electrician' issue, the defendant relied on CCM evidence confirming no such registered entity, and the absence of any documentary evidence of its existence despite the plaintiff claiming to have worked with the deceased.

- F [21] Regarding the payment source, the defendant highlighted bank statements showing the payment came from the plaintiff's account, contradicting the deceased's declaration that he would be the payor. On alcohol consumption, the defendant referred to the plaintiff's admission during cross-examination that the deceased consumed alcohol, and the post mortem evidence of alcohol in his system.

- G [22] The defendant emphasised that the duty of utmost good faith primarily falls on the proposer to disclose material facts, and insurers are entitled to rely on the proposer's declarations without independent verification. For the alternative grounds, the defendant submitted that the presence of Chloroquine without evidence of prescription, alcohol above legal driving limits, and suspicious circumstances surrounding the death triggered the exclusion clauses in the certificate.

- H
I [23] Lastly, the defendant argued that the police evidence should be given little weight as the police witness was not the investigating officer, did not have access to the investigation papers, and completed the questionnaire before receiving the post mortem report.

WITNESSES

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[24] Five witnesses appeared for the plaintiff as follows:

- (a) PW1 is Zamzarina bt Saad, a takaful agent. Her evidence primarily relates to the takaful application process and WhatsApp conversations with the deceased. She testified about the deceased's specific concerns regarding accidental death coverage, particularly asking whether coverage would apply 'kalau jatuh dari bangunan' (if falling from a building). She explained that she facilitated the takaful application and payment process, where the deceased initially faced technical difficulties making payment and subsequently used the plaintiff's Maybank account as an alternative payment method. She also testified about being contacted by the plaintiff on the night of the deceased's death regarding the claim; B C
- (b) PW2 is Mohd Nur Azmee bin Basri, another takaful agent. His evidence appears limited based on the records, as he was a subpoenaed witness. There were no cross-examination questions for him from the defendant. His role appears to be supplementary to PW1's evidence regarding the agency relationship; D E
- (c) PW3 is Mohamad Habizan bin Mohamad Yussof, the plaintiff himself and nominated beneficiary under the certificate. His evidence centers on his relationship with the deceased (his adopted father), the circumstances of discovering the takaful policy after his adopted father's death, and the payment arrangements. He admitted during cross-examination that the takaful contribution payment of RM1,525 came from his own CIMB bank account, though he claimed his father had permission to use the account. His credibility was challenged when he initially claimed the deceased had no bank account, but was later shown evidence that the deceased had an account with Bank Simpanan Nasional; F G
- (d) PW4 is Dr Danial Aizat bin Rosli, the Government doctor who prepared the post mortem report. His evidence relates to the cause of death and the finding of alcohol in the deceased's blood during the post mortem examination. He testified that the alcohol detected was most likely due to consumption prior to death; and H
- (e) PW5 is Insp Mohd Hafiz bin Abdul Rahman, a police inspector who served as Head of Police Station at Balai Polis Jinjang. His evidence relates to a police questionnaire that he signed and stamped for the insurance company, which stated that the deceased's death was due to an accidental fall during servicing of an air-conditioning unit. However, he testified that he was not the investigating officer but only supervised the investigation process, with Sergeant Low being the actual investigating officer. He admitted that the police investigation was still ongoing and I

A incomplete when he signed the questionnaire, the post mortem report was not yet available at that time, his knowledge was limited to the period before his transfer from the station, and he did not have access to the complete investigation papers for the trial. He confirmed that his testimony was based solely on the answers provided in the police questionnaire he had signed.

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[25] Five witnesses appeared for the defendant as follows:

- C** (a) DW1 is Ab Razak bin Isa (subpoenaed), Senior Manager of the CCM. His evidence confirmed that there is no record of a company called 'Nesh Electrician' as declared by the deceased in his proposal form;
- D** (b) DW2 is Chang Hui Chin (subpoenaed), Operations Officer at Maybank Islamic Shah Alam branch. Her evidence confirmed the bank records showing that the takaful contribution payment of RM1,250 came from the plaintiff's account via IBK fund transfer;
- E** (c) DW3 is Azuana bt Abdul Aziz (subpoenaed), Officer of LHDN. Her evidence confirmed that the deceased was not a registered taxpayer and had no tax payment records, contradicting his declared annual income of RM450,000 in the proposal form;
- F** (d) DW4 is Iman bt Azmi, an underwriter with the defendant. Her evidence relates to the underwriting process and risk assessment. She testified that she was the highest authority for underwriting this particular case and that she conducted the risk assessment. She testified that had they known about the non-disclosed facts at the proposal stage, they would not have issued the certificate. She confirmed that the approval was based on the information provided in the proposal form; and
- G** (e) DW5 is Valarmathi a/p Ayasamy, Senior Manager of the Claims Department. Her evidence concerns the claims investigation process conducted after the deceased's death. She testified about discovering the non-disclosed facts during the claim investigation and confirmed that these findings led to the claims department asking the underwriter to reassess what the decision would have been if the true facts had been known earlier.
- H**

ISSUES

- I** [26] From the facts of the case, defences relied on by the defendant and the submissions of parties, the court frames the following main issues for deliberation which this court considers pivotal to the resolution of this case:
- (a) whether the inclusion of the certificate in Part A of the common bundle of documents precludes the defendant from challenging its validity and

- enforceability on grounds of misrepresentation or non-disclosure of material facts; **A**
- (b) whether the defendant breached its duty of utmost good faith by failing to investigate or verify the deceased's information before issuing the certificate; **B**
- (c) whether the defendant should be estopped from challenging the validity of the certificate on grounds of misrepresentation regarding the deceased's annual income of RM450,000, given that the defendant's underwriter approved the proposal despite having concerns about the declared income; **C**
- (d) whether the deceased's declaration of 'Nesh Electrician' as his company name in the proposal form constituted a misrepresentation;
- (e) whether the deceased misrepresented the source of the takaful contribution in the proposal form when he declared that he would be the payor, given that the documentary evidence shows the payment came from the plaintiff's bank account rather than the deceased's account; **D**
- (f) whether the deceased misrepresented his alcohol consumption in the proposal form when he answered 'No' to the question asking whether he 'consume[s] beer, wine or other alcohol'; **E**
- (g) whether the misrepresentations regarding the deceased's annual income of RM450,000 and the existence of 'Nesh Electrician' were material to the defendant's risk assessment; **F**
- (h) whether the defendant was entitled to avoid the certificate ab initio and refuse all claims pursuant to para 15(1), Schedule 9 of the Islamic Financial Services Act 2013 ('the IFSA') and the relevant clauses of the certificate, should the court find that the deceased made deliberate or reckless misrepresentations of material facts; **G**
- (i) whether the defendant established that the deceased's death was 'caused by' taking drugs or narcotics without prescription within the meaning of cl 2.4.1(f) of the certificate;
- (j) whether the defendant established that the deceased's death was 'caused by' alcohol and drugs intoxication within the meaning of cl 2.4.1(h) of the certificate; **H**
- (k) whether the defendant established that the deceased's death was caused by 'attempted suicide or self-inflicted injuries while sane or insane' within the meaning of cl 2.4.1(c) of the certificate; **I**
- (l) whether the defendant's payment of the khairat benefit amounting to RM3,113.51 constitutes an admission that the certificate is valid and enforceable, thereby estopping the defendant from avoiding the

- A certificate or declining the death claim;
- (m) whether the plaintiff's failure to provide additional documents requested by the defendant under cl 12.7.1 of the certificate constituted a breach that would justify the defendant in not processing the claim; and
- B (n) whether adverse inference should be drawn against the defendant under s 114(g) of the Evidence Act 1950 for failing to call Miss Sok Kwan as a witness and for not producing various documents including PwC investigation findings, AMLA screening results, standard operating procedures, and written underwriting decisions.
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ANALYSIS AND FINDINGS OF THE COURT

Status of the certificate as a Part A document

- D [27] The plaintiff contends that the certificate's inclusion in Part A of the common bundle of documents means that its validity and enforceability cannot be challenged. The defendant argues that this merely acknowledges the document's authenticity but does not determine its enforceability.
- E [28] This argument requires careful consideration of both procedural and substantive aspects of law. Order 34 r 2(2)(d) of the Rules of Court 2012 provides that 'the contents of the bundle of documents referred to in sub-para (c) shall be agreed on between all parties as far as possible and this
- F bundle of agreed documents shall be filed by the plaintiff and marked as Part A'. The purpose of this rule is to streamline court proceedings by requiring parties to agree on the authenticity of documents to avoid unnecessary technical objections during trial.
- G [29] It is critical to distinguish between acknowledging a document's existence and authenticity (ie, that it is what it purports to be and its contents have not been altered) and acknowledging its legal effect or enforceability. The former is a matter of procedural convenience, while the latter involves substantive legal determinations that fall squarely within the court's
- H jurisdiction.
- I [30] In *Thiagarajan S Rengasamy & Ors v Sri Ganes Palaniapan*, the court observed that for documents in Part A, 'the truth of its contents being conceded'. However, this must be understood in its proper context. The 'truth' referred to relates to the factual contents of the document — that the document contains what it purports to contain — not that the legal rights or obligations purportedly created by the document are valid and enforceable as a matter of law. Similar reasoning can be found in *Raja Lob Sharuddin Raja Ahmad Terzali & Ors v Sri Seltra Sdn Bhd*, where the court held that 'where the

parties have agreed to its production and content, no party would be allowed to ask any question at all on that document'. Again, this addresses evidential matters, not substantive legal determinations.

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[31] This distinction is further supported by established contract law principles. Sections 92 and 93 of the Evidence Act 1950 prohibit oral evidence to contradict, vary, add to, or subtract from the terms of a written document or to supply defects in its language. However, these provisions do not preclude a court from determining whether a contract is void *ab initio* due to misrepresentation, as this goes to the very formation and enforceability of the contract rather than the interpretation of its terms.

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[32] The Federal Court in *Provincial Insurance Co Ltd v Yeo Chee Swee* [1984] 2 MLJ 60; [1984] 1 MLRA 227 recognised that while insurance policies are 'subject to the same rules of construction as any other written contract,' this pertains to interpretation of terms rather than questions of validity. When a contract's enforceability is challenged on grounds of misrepresentation or non-disclosure of material facts — especially in insurance or takaful contracts which are *uberrimae fidei* — the court must look beyond the document itself to determine if the contract was validly formed.

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[33] To accept the plaintiff's argument would lead to an absurd result whereby a party could shield a legally defective contract from judicial scrutiny merely by agreeing to include it in Part A. This would undermine the court's fundamental role in determining substantive legal rights and obligations according to established principles of law.

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[34] Therefore, while the certificate's existence and contents are not in dispute, its enforceability remains a triable issue, as correctly identified in the agreed issues before this court. The defendant is not precluded from challenging the certificate's validity on grounds of misrepresentation or non-disclosure of material facts.

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Principle of utmost good faith (uberrimae fidei)

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[35] The plaintiff submits that both parties are bound by the principle of utmost good faith, and argues that the defendant breached this duty by not investigating the deceased's information before issuing the certificate. Specifically, the plaintiff contends that the defendant failed to investigate and verify critical information including: (a) the deceased's declared annual income of RM450,000, despite the defendant's underwriter finding this amount questionable and the absence of any supporting documentation such as income tax records or bank statements; (b) the legitimacy and details of the deceased's claimed business 'Nesh Electrician,' including its registration status and

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- A operational details; (c) the actual source of takaful contribution payments, which came from the plaintiff's bank account rather than the deceased's account as declared; (d) the deceased's medical history and lifestyle habits, particularly regarding alcohol consumption, where the defendant failed to conduct further medical examinations or request additional medical questionnaires despite red flags in the application; and (e) the deceased's employment status and business operations, where no verification was conducted with relevant authorities or through site visits.
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- C [36] The plaintiff argues that the defendant's own underwriting witness ('DW4') admitted that had proper investigation been conducted and accurate information obtained, the certificate would not have been issued in its current form, or potentially not issued at all, as the defendant would have requested further questionnaires, blood tests, and additional documentation before making any underwriting decision.
- D
- E [37] The defendant maintains that the primary duty of disclosure falls on the proposer, and disputes having any reciprocal investigative obligation beyond relying on the proposer's declarations. The defendant's position is grounded in the principle of *uberrimae fidei* (utmost good faith), arguing that the proposer bears exclusive responsibility for honest disclosure as they possess knowledge of their personal circumstances, financial status, and medical history. The defendant contends that takaful operators have no duty to independently verify or investigate information provided by proposers, and their role is limited to relying on the truth and completeness of the proposer's answers and declarations.
- F
- G [38] It is trite law that takaful contracts, like insurance contracts, are contracts of utmost good faith. This principle is codified in para 5(2) and 5(8), Schedule 9 of the IFSA, which provides that: '(2) It is the duty of the consumer to take reasonable care not to make a misrepresentation to the licensed takaful operator when answering any questions under subparagraph (1)'; and '(8) Subject to subparagraphs (1) and (3), a consumer shall take reasonable care to disclose to the licensed takaful operator any matter, other than that in relation to subparagraph (1) or (3), that he knows to be relevant to the decision of the licensed takaful operator on whether to accept the risk or not and the rates and terms to be applied'.
- H
- I [39] While I acknowledge that takaful operators also have obligations of good faith, these do not extend to an obligation to independently verify all information provided by proposers. The law places the primary duty of disclosure on the proposer, who possesses exclusive knowledge of their personal circumstances. This fundamental principle was clearly articulated in *Newsholme Brothers v Road Transport And General Insurance Company, Limited*

[1929] 2 KB 356 (English CA), where Scrutton LJ observed that ‘the contract of insurance requires the utmost good faith; the insurer knows nothing; the assured knows everything about the risk he wants to insure and he must disclose to the insurer every fact material to the risk’. The court further emphasised that ‘the proposal is the proposal of the assured, the responsibility of declaring it true is his’ and questioned ‘how can it be the duty of the company, through their directors or agents, to the assured, to see that the assured makes correct statements of fact, when he promises them they are true’.

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[40] This principle has been consistently applied in Malaysian jurisprudence dealing with takaful contracts. In *Jamilah bt Hj Ali & Anor v Bank Simpanan Nasional & Anor* [2020] 7 MLJ 314 (HC), See Mee Chun J reaffirmed that ‘a contract of insurance including takaful is a contract of *uberrimae fidei* (of good faith) and any suppression or non disclosure of material facts by the proposer will entitle the insurance company to avoid the contract’. The court emphasised that the duty lies squarely on the proposer, noting that the evidence showed the deceased ‘was suffering from and was being treated for diabetes and hypertension prior to her completion of the proposal form’ and that ‘those facts were not disclosed, or were misrepresented’ to the takaful operator. Significantly, the court found that the takaful operator’s request for medical records after the deceased’s death was merely ‘to support its defence of non-disclosure’ rather than constituting any breach of duty on the operator’s part.

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[41] These authorities establish that takaful operators are entitled to rely on the declarations made by proposers in proposal forms, and are under no legal obligation to conduct independent verification of such declarations before issuing certificates. The burden of ensuring complete and accurate disclosure rests entirely with the proposer, who is in the best position to know all material facts relating to the risk.

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[42] The recent case of *Siva Prakash a/l Ramasamy (as executor and trustee for the estate of Jachiswaran a/l Duroy Selvam) v MCIS Insurance Bhd* [2024] MLJU 219 (HC), a judgment of this court, is particularly instructive. In that case, the deceased had failed to disclose a serious accident in 2015 which resulted in hospitalisation including admission to the ICU, despite being specifically asked in the proposal form whether he had suffered any physical injury or been admitted to hospital in the last five years. The deceased had answered ‘No’ to these clear and straightforward questions. Additionally, there were significant discrepancies in his declared income across multiple policies, with variations that could not be explained by normal income fluctuations. Despite the plaintiff’s argument that the insurer should have cross-checked against previous policies or made further enquiries to uncover these matters, I held that ‘the duty of utmost good faith in insurance law requires a high standard of

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A honesty and disclosure on the part of the insured ... The insured's duty to disclose and not misrepresent material facts is a strict one. It is not open to an insured to say that the insurer should have investigated further or uncovered the matters independently'.

B [43] I therefore find that the defendant was entitled to rely on the deceased's declarations in the proposal form, and had no legal obligation to verify these declarations before issuing the certificate. The defendant's subsequent discovery of misrepresentations after the deceased's passing does not constitute a breach of the duty of good faith on their part.

C *Misrepresentation of material facts*

Annual income of RM450,000

D [44] The plaintiff contends that although the deceased's declared income of RM450,000 may have been questionable, the defendant's underwriter ('SD4') approved the proposal despite her concerns, and therefore the defendant should be estopped from raising this issue. SD4 testified that declaring RM450,000 annual income without tax documentation was 'not normal' and acknowledged finding 'abnormalities from proposal form' during underwriting. Despite these concerns, she approved the proposal based on the principle that 'we take the declaration as true' without requesting tax details or reporting to higher authority, stating she had no 'suspicious' requiring escalation. The plaintiff argues that having approved the proposal despite these identified irregularities, the defendant should be estopped from subsequently challenging the income declaration.

G [45] The defendant argues that the declaration was demonstrably false, as evidenced by the plaintiff's own admissions during cross-examination and independently corroborated by official LHDN records. During trial, the plaintiff explicitly admitted that the deceased did not earn RM450,000 annually, responding 'Tak ada' when directly questioned about this income level. This admission was substantiated by LHDN witness testimony confirming that the deceased was not a registered taxpayer and had no record of any tax payments, despite it being a mandatory legal requirement for persons earning more than RM3,000 monthly. The defendant contends that the underwriter's approval based on the 'take declaration as true' principle does not immunise the contract from avoidance where material misrepresentation is subsequently established through objective evidence. The defendant emphasises that proving any one of the four alleged material misrepresentations would justify avoiding the certificate ab initio, regardless of the underwriter's initial approval process, as the duty of utmost good faith fundamentally requires truthful disclosure from the proposer.

[46] I must first address what constitutes a misrepresentation in the context of takaful contracts. A misrepresentation occurs when a proposer provides information that is factually incorrect in response to a clear question posed by the takaful operator. The question in the proposal form at item 1.18 (p 160/Bundle A) explicitly asked for the proposer's annual income, to which the deceased responded 'RM450,000'. This is not a matter of opinion, subjective assessment, or complex medical diagnosis; it is a straightforward factual question about the deceased's financial circumstances, something uniquely within his knowledge.

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[47] The evidence on this issue is compelling. The plaintiff himself, who claimed to have worked with the deceased and to have been his adopted son, admitted during cross-examination that the deceased did not earn RM450,000 annually (notes of evidence dated 7 May 2024, pp 88–89). When asked directly 'Saya nak cakap RM450,000 setahun pendapatannya? Tak ada,' the plaintiff responded 'Tak ada'. When further questioned to confirm 'Saya sahkan, maksudnya SiMati memang tak mempunyai pendapatan tahunan sebanyak RM450,000?' the plaintiff again confirmed 'Ya'. This admission by the plaintiff, who was closely associated with the deceased, constitutes powerful evidence that the declared income was false.

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[48] This admission is corroborated by the testimony of DW3 from LHDN, who confirmed that the deceased was not a registered taxpayer in Malaysia. While Malaysian tax law requires individuals with taxable income to register and file returns, the deceased had not done so despite claiming an annual income of RM450,000. Such a substantial income would unquestionably attract tax liability under Malaysian law. The absence of any tax registration strongly supports the conclusion that the deceased did not earn anywhere near the declared amount.

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[49] The plaintiff has failed to produce any documentary evidence — such as bank statements, payment vouchers, business records, or client contracts — that might substantiate the deceased's claimed income, despite having ample opportunity to do so during trial. This is particularly significant because the plaintiff claimed to have worked closely with the deceased in business. In *Esso Malaysia Bhd v Hills Agency (M) Sdn Bhd & Ors* [1994] 1 MLJ 740 (HC), the court established that 'admissions are the strongest evidence possible'. When these admissions are considered alongside the complete absence of documentary evidence supporting the declared income, the only reasonable conclusion is that the stated income of RM450,000 was fictitious. The plaintiff, having admitted the falsity of the declared income, cannot now contend that the court should disregard this admission or require further proof of the misrepresentation.

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A [50] The discrepancy between the declared income of RM450,000 and the deceased's actual financial circumstances is further underscored by evidence that he resided in a low-cost flat prior to his death, which would be incongruous with such a substantial income. This substantial gap between declaration and reality cannot be attributed to innocent error or
B misunderstanding.

C [51] The plaintiff's argument that the underwriter approved the proposal despite having doubts about the declared income, and that this should somehow estop the defendant from raising the issue, fundamentally misunderstands the nature of the duty of utmost good faith in takaful contracts. This duty, which finds its roots in both Islamic financial principles and common law insurance doctrines, places the primary obligation of honest disclosure on the proposer, not on the takaful operator to verify each
D declaration.

E [52] The Federal Court in *Tan Kang Hua v Safety Insurance Co* [1973] 1 MLJ 6 recognised an exception where the insurer had 'knowledge of the facts which they say were not communicated'. However, this exception applies only where the insurer had actual knowledge of the true facts at the time of proposal. In the present case, there is no evidence that the defendant knew the deceased's declared income was false at the time the certificate was issued. That the underwriter may have harboured doubts is a far cry from having actual
F knowledge of the truth.

G [53] Even in *Pacific & Orient Insurance Co Sdn Bhd v Kathirvelu* [1992] 1 MLJ 249, where the Supreme Court limited the insurer's right to repudiate a policy, the court emphasised that the proposer's duty to answer honestly remains intact. The court there was concerned with questions requiring subjective opinion, such as whether one has 'any disease,' which even a skilled doctor might not answer with certainty. In contrast, a person's annual income is an objective fact within their definite knowledge.

H [54] I find that the deceased's declaration of an annual income of RM450,000 was a clear and material misrepresentation of fact in the proposal form. The magnitude of this misrepresentation (declaring an income several times higher than his actual earnings) and its centrality to the takaful operator's risk assessment make it particularly significant.

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Nesh Electrician

[55] The plaintiff argues that 'Nesh Electrician' existed as an unregistered business, and the SSM witness confirmed that a business could exist without

being registered. The defendant counters that there is no evidence of the business's existence beyond the plaintiff's bare assertion. A

[56] This issue requires careful examination of what constitutes a misrepresentation regarding one's occupation and business entity in a takaful proposal. Items 1.14 and 1.19 of the proposal form (p 160/Bundle A) explicitly asked the deceased to state his occupation and employer/company name. The deceased declared that he was 'SELF-EMPLOYED' as a 'BUSINESSMAN — MANUAL WORK' under the company name 'NESH ELECTRICIAN'. These declarations create a specific impression — that the deceased operated a business entity called 'Nesh Electrician' through which he conducted his work as an electrician. B C

[57] The existence of 'Nesh Electrician' as a functioning business entity is a question of fact that must be determined based on evidence. DW1, a Senior Manager from the CCM, testified unequivocally that there is no registered entity called 'Nesh Electrician' in Malaysia (p 33/Bundle B1). This testimony establishes that the business was not formally registered as required by law. Section 12 of the Registration of Businesses Act 1956 makes it an offence punishable by fine and/or imprisonment to conduct business without proper registration. D E

[58] While DW1 acknowledged during cross-examination that a business could theoretically 'exist' without being registered (in the sense that commercial activities could be conducted under an unregistered name), such operation would be unlawful. More importantly, the mere theoretical possibility of an unregistered business existing does not prove that 'Nesh Electrician' actually did exist as a functioning business entity. F

[59] The plaintiff, who claims to have worked with the deceased in this purported business, has conspicuously failed to produce any documentary evidence of its existence. Despite bearing the burden of proof, the plaintiff has not tendered a single business card, letterhead, invoice, receipt, quotation, contract, client list, advertisement, business bank account, supplier agreement, or any other business documentation that would typically exist for even the most informally operated business. Even for an unregistered business, one would expect to find some documentary trail of its commercial activities. G H

[60] The plaintiff's testimony regarding working with the deceased in 'wiring business' is notably vague and lacks specific reference to 'Nesh Electrician' as a business name or entity. At best, the plaintiff's testimony suggests that he and the deceased may have performed some electrical work together informally. This falls far short of establishing the existence of an actual business entity called 'Nesh Electrician' as declared in the proposal form. I

- A [61] It is instructive to consider the case of *Great Eastern Life Assurance (M) Bhd v Poobalan a/l Rajah* [2019] 10 MLJ 1; [2019] 10 CLJ 353 (HC), where the court held that the defendant's failure to adduce any evidence of his declared annual income during trial, despite knowing that the plaintiff had pleaded inconsistencies in his declared income, would operate against him.
- B The plaintiff has attempted to distinguish this case by arguing that in *Poobalan a/l Rajah*, there were multiple factors not present here: the defendant was charged with cheating SOCSO for the same disability claim, medical documents were alleged to be forged, the defendant made contradictory income declarations across multiple insurance policies, and he was the only witness in his own case. However, this attempt to distinguish fails to appreciate the core principle established in *Poobalan a/l Rajah* — that a party bearing the burden of proof who fails to produce relevant evidence within their possession or control must suffer the adverse inference that such evidence would not support their case. The principle applies with equal force here. The plaintiff claims to have worked with the deceased in the purported 'Nesh Electrician' business and to have been his adopted son, yet has produced not a single document evidencing the business's existence. The distinctive facts in *Poobalan a/l Rajah* may have strengthened the inference drawn by the court in that case, but they do not limit the application of the basic evidentiary principle to the present circumstances. If anything, the complete absence of business documentation here, despite the plaintiff's claimed intimate knowledge of the deceased's affairs, makes the adverse inference equally compelling.
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- F [62] Even in jurisdictions that recognise informal or unincorporated business entities, such as sole proprietorships or partnerships not registered with authorities, these entities would still generate documentary evidence of their existence through their commercial activities. The complete absence of such evidence in this case is telling.
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- H [63] The deceased's declaration regarding 'Nesh Electrician' cannot be dismissed as a mere technical error or misunderstanding. It represented to the defendant that he was engaged in a specific type of occupation through a specific business entity, which would have implications for risk assessment. An established business, even if unregistered, would suggest a level of financial stability and regular income that would affect the defendant's evaluation of the deceased's ability to maintain premium payments for a high-value takaful certificate.
- I [64] Based on the totality of evidence, or rather the significant lack thereof, I find that the deceased misrepresented his occupation and company in the proposal form. While he may have occasionally performed electrical work, the evidence does not support the existence of 'Nesh Electrician' as a functioning business entity as represented to the defendant.

Source of Takaful contribution

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[65] The plaintiff contends that while the payment came from his account, it was the deceased who controlled the transaction due to technical difficulties. The defendant relies on bank statements showing the payment originated from the plaintiff's account, contradicting the deceased's declaration that he would be the payor.

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[66] The contemporaneous documentary evidence shows that the contribution payment came from the plaintiff's CIMB bank account (see p 50/Bundle B1). However, it is important to note that only one premium payment was made before the deceased's untimely passing, merely 20 days after the certificate was issued.

C

[67] The plaintiff provided a plausible explanation that the deceased encountered technical difficulties with his own payment method, as evidenced in the WhatsApp conversations at p 9/encl 69/exh D1, which showed system errors when attempting payment. The deceased then resorted to using the plaintiff's account as a one-time solution to this technical problem.

D

[68] I find this explanation credible, particularly given the short timeframe in which the payment was made after SP1 provided her bank details. The fact that only a single payment was made before the deceased's passing does not establish a pattern or trend sufficient to conclude that the deceased misrepresented the source of funds. Had the deceased lived longer and made multiple payments from the plaintiff's account, this might have constituted a misrepresentation. However, on the evidence before me, I cannot conclusively find that the deceased misrepresented the source of the takaful contribution in the proposal form.

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Alcohol consumption

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[69] The plaintiff argues there is no evidence the deceased consumed alcohol at the time of applying for the certificate, and the alcohol detected post mortem could have been a one-time occurrence. The defendant points to the plaintiff's admission during cross-examination that the deceased consumed alcohol, and the post mortem findings confirming alcohol in his system.

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[70] The deceased answered 'No' to question 4.1 in the proposal form asking whether he 'consume[s] beer, wine or other alcohol' (p 166/Bundle A). During cross-examination, when asked 'Sebenarnya si Mati ada meminum alkohol. Setuju atau tak setuju?', the plaintiff affirmed (notes of evidence dated 7 May 2024, p 90). The post mortem report (pp 3–9/Bundle B1) also detected alcohol in the deceased's blood specimen.

I

A [71] From a linguistic perspective, the term ‘consume’ in question 4.1 is ambiguous. In ordinary usage, asking whether someone, ‘Do you consume alcohol?’ typically implies habitual or regular consumption, not a single instance of drinking. The Malay phrase ‘ada meminum alkohol’ used during cross-examination is equally ambiguous — it could refer to a single instance or
B habitual consumption. In the insurance context, the question is typically aimed at understanding lifestyle habits that may affect risk assessment, not isolated incidents.

C [72] The evidence only establishes that the deceased had alcohol in his system at the time of death and that he may have consumed alcohol on at least one occasion. This does not necessarily contradict his answer in the proposal form if the question is understood to inquire about regular or habitual consumption. DW4 herself testified during cross-examination that the alcohol
D found during post mortem does not mean the deceased consumed alcohol during the proposal stage or that it was more than a one-time event.

E [73] Given these linguistic ambiguities and the lack of conclusive evidence about the deceased’s alcohol consumption habits at the time of the proposal, I cannot find with sufficient certainty that the deceased misrepresented his alcohol consumption in the proposal form.

Materiality of the misrepresentations

F [74] For a misrepresentation to invalidate a takaful contract, it must be material to the takaful operator’s assessment of risk. The plaintiff argues that the defendant approved the certificate despite apparent anomalies in the information provided, suggesting these were not material. The defendant contends that each of the alleged misrepresentations was material to their risk
G assessment.

H [75] Paragraph 7(8), Schedule 9 of the IFSA provides that ‘Unless the contrary is shown, it is to be presumed that the consumer knew that a matter about which the licensed takaful operator asked a clear and specific question was relevant to the licensed takaful operator’. This creates a presumption that all matters asked by the takaful operator in its proposal form are relevant to the takaful operator, unless proven otherwise. In this case, the defendant specifically asked about annual income, occupation/company, payment source, and alcohol consumption in the proposal form, thus creating a
I presumption of materiality for all these matters.

[76] This presumption is supported by the testimony of DW4, the defendant’s underwriter, who explained that these matters would have influenced the defendant’s decision to issue the certificate and on what terms.

In her witness statement, DW4 stated in Q&A 6 that ‘We would not have approved the certificate as it is because the actual employment status, annual income and source of takaful contribution payment would have influenced our decision especially as to how much coverage to be given, or it could raise possible anti-money laundering concerns, or we could potentially reject the entire proposal if we found out that any material information had been misrepresented to us’. Similarly, in Q&A 7 regarding alcohol consumption, DW4 testified that ‘We would have requested for the deceased to complete further questionnaires and/or to take a blood test, before deciding whether to offer coverage or otherwise, and what terms of coverage would be offered, if any’ and that ‘Ultimately, PruBSN would not have issued the certificate to the deceased as it is without further investigation and/or accurate information’. This evidence was confirmed during cross-examination when DW4 agreed that ‘If different details are provided the defendant would not have approve’ (notes of evidence dated 30 August 2024, p 24).

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[77] Significantly, the plaintiff himself admitted during cross-examination that these matters were material to the defendant’s assessment. When asked by counsel: ‘Saya cadangkan Encik yang tadi maklumat pasal minum alcohol, pasal pendapatan tahunan, perniagaan dan identiti siapa yang bayar sumbangan takaful. Kesemua maklumat ini adalah maklumat penting bagi pihak insurans semasa dia mempertimbangkan sama ada nak bagi perlindungan takaful kepada seseorang ke tidak. Encik ada setuju dengan cadangan saya ke tidak?’ the plaintiff responded ‘Setuju’ (notes of evidence dated 7 May 2024, pp 91–92). When further asked: ‘Saya cadangkan En Habizan bahawa mana-mana 1 dari salah representasi yang tadi kita sebut tu 4 item tu, mana-mana 1 salah representasi tersebut akan memberikan hak kepada PruBSN untuk menolak tuntutan ataupun membatalkan polisi sejak permulaan. Encik setuju dengan cadangan saya?’ the plaintiff again affirmed ‘Ya’ and ‘Setuju’. This admission further strengthens the finding of materiality.

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[78] Based on my findings above, I have determined that only two of the four alleged misrepresentations have been conclusively established: the misrepresentation regarding the deceased’s annual income of RM450,000 and the misrepresentation regarding the existence of ‘Nesh Electrician’. Nevertheless, these two misrepresentations alone were sufficiently material to the defendant’s assessment of risk. The annual income directly impacts the affordability and sustainability of the takaful contributions, while the occupation and business details influence the risk profile assessment, both critical factors in the defendant’s underwriting decision.

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Deliberate or reckless nature of the misrepresentations

[79] Under para 7(4) Schedule 9 of the IFSA, a misrepresentation is

A deliberate or reckless if the consumer knew it was untrue or misleading, or did not care whether it was untrue or misleading, and knew or did not care whether the matter was relevant to the takaful operator. It provides:

A misrepresentation is deliberate or reckless if the consumer knew that —

- B** (a) it was untrue or misleading, or did not care whether or not it was untrue or misleading; and
- (b) the matter to which the misrepresentation related was relevant to the licensed takaful operator, or did not care whether or not it was relevant to the licensed takaful operator.

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D [80] The two established misrepresentations concerned basic personal information that would have been well within the deceased's knowledge: his annual income and his company/business. These are not matters on which the deceased could have been honestly mistaken. The deceased declared an annual income of RM450,000 when, by the plaintiff's own admission, he did not earn such an amount. Similarly, he claimed to be employed by 'Nesh Electrician' when no evidence supports the existence of such an entity beyond the plaintiff's bare assertions.

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[81] Given the clear nature of the questions in the proposal form and the 'Important Notice' at the top of the form stating:

IMPORTANT NOTICE/NOTA PENTING:

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You need to fully understand that your answers and/or statements given in respect of the questions asked by Prudential BSN Takaful Berhad (PruBSN), and any other relevant documents completed by you in connection with the proposal and in any medical report or amendments (collectively referred to as 'the information') are relevant to PruBSN in deciding whether to accept your proposal and the rates and terms to be applied.

G

H [82] Emphasising the importance of providing true information, I find that the deceased either knew his answers regarding income and occupation were untrue or misleading, or did not care whether they were untrue or misleading. These two misrepresentations were therefore deliberate or reckless within the meaning of para 7(4) Schedule 9 of the IFSA.

Effect of the misrepresentations

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[83] Paragraph 15(1) Schedule 9 of the IFSA provides that 'If a misrepresentation was deliberate or reckless, a licensed takaful operator may avoid the consumer takaful contract and refuse all claims'. Additionally, para 15(2) states that: 'Where the licensed takaful operator avoids a contract under subparagraph (1), the licensed takaful operator shall return such moneys due under such contract as may be specified by the Bank'. These provisions

clearly establish the takaful operator's right to avoid the certificate and refuse all claims in cases of deliberate or reckless misrepresentation, subject to returning moneys as specified by Bank Negara Malaysia.

A

[84] In this case, the certificate had been in force for approximately 20 days when the deceased passed away. Given my findings that the deceased made deliberate or reckless misrepresentations of material facts, I conclude that the defendant was entitled to avoid the certificate and refuse all claims pursuant to para 15(1) Schedule 9 of the IFSA.

B

[85] This conclusion is consistent with the certificate's own terms. Clause 12.1.4 of the certificate (at p 133/Bundle A) states that 'In the event of a misrepresentation where Your certificate has been in force for a period of two (2) certificate years or less it shall be handled in accordance with Schedule 9 of the IFSA whereby it may result in any of the following: (a) Your certificate being avoided and all claims refused ...'. When read together with cll 12.8.2 and 12.8.3, which address misstatement and misrepresentation of information, these provisions clearly allow for the avoidance of the certificate in the present circumstances.

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Alternative grounds: Exclusion clauses

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[86] Given my finding that the certificate is void ab initio, it is not strictly necessary to address the alternative grounds raised by the defendant. However, for completeness, I will briefly consider whether the accidental death benefit would have been payable had the certificate been valid.

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Clause 2.4.1(f) — Taking drugs or narcotics

[87] The plaintiff argues there is no evidence that the Chloroquine detected in the deceased's system was taken without prescription. The defendant contends that the burden was on the plaintiff to show that the Chloroquine was prescribed by a qualified doctor.

G

[88] Clause 2.4.1(f) excludes payment for accidental death that is directly or indirectly caused by 'taking drugs or narcotic unless taken as prescribed by a qualified Doctor or Physician'. The operative phrase here is 'caused by' — the mere presence of drugs or narcotics is insufficient; there must be a causal connection between the drug consumption and the death.

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[89] The post mortem report (p 8/Bundle B1) shows that Chloroquine was detected in both the deceased's urine and blood specimens. PW4, the doctor who performed the post mortem, confirmed that Chloroquine is a prescription

A medication typically used to treat malaria and is not available over the counter (notes of evidence dated 8 May 2024, pp 6–7, 20).

B [90] While the plaintiff failed to provide evidence that the deceased had obtained a prescription for Chloroquine, this alone is insufficient to trigger the exclusion. The defendant must establish not only that the drug was taken without prescription but also that it caused or contributed to the death, either directly or indirectly.

C [91] Critically, PW4, the post mortem doctor, did not testify that the presence of Chloroquine caused or contributed to the deceased's fall. The post mortem report identifies the cause of death as 'multiple injuries due to fall from height' without attributing the fall to any influence of Chloroquine. Further, no toxicology expert was called to testify about whether the amount of Chloroquine detected was sufficient to impair the deceased's cognitive or motor functions.

E [92] On a balance of probabilities, I find that the defendant has not established that the deceased's death was 'caused by' taking drugs or narcotics without prescription. The mere presence of Chloroquine in the deceased's system, without evidence of causation, is insufficient to trigger the exclusion under cl 2.4.1 (f) of the certificate.

F *Clause 2.4.1(h) — Alcohol and drugs intoxication*

G [93] The plaintiff argues that the alcohol level detected in the deceased's blood was below the legal limit at the time of his death. The defendant contends that the level was above the legal driving limit according to the Road Transport Act 1987.

H [94] Clause 2.4.1(h) excludes payment for accidental death that is directly or indirectly caused by 'alcohol and drugs intoxication'. As with cl 2.4.1(f), causation is a critical element of this exclusion.

I [95] The post mortem report detected approximately 67mg of alcohol per 100ml of blood in the deceased's system. The plaintiff correctly points out that at the time of the deceased's death (17 August 2020), the prescribed limit under s 45G of the Road Transport Act 1987 was 80mg per 100ml of blood. The limit was only reduced to 50mg by the Road Transport (Amendment) Act 2020, which came into force on 22 October 2020, after the deceased's death.

[96] Therefore, the deceased had alcohol in his system at levels below the legally prescribed limit for intoxication at the time of his death. Without

evidence that this level of alcohol impaired his functioning, I cannot find that he was intoxicated within the meaning of cl 2.4.1(h).

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[97] Furthermore, even if the combined presence of alcohol and Chloroquine could potentially have impaired the deceased's judgment, the defendant has not adduced expert evidence establishing this causal connection. PW4, the post mortem doctor, did not attribute the fall to any influence of alcohol or drugs, and no toxicological expert was called to testify about whether the detected substances could have caused intoxication or impairment.

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[98] On balance, I find that the defendant has not established that the deceased's death was caused by alcohol and drugs intoxication. The mere presence of these substances in his system, without evidence of intoxication and causation, is insufficient to trigger the exclusion under cl 2.4.1(h) of the certificate.

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Clause 2.4.1(c) — Attempted suicide or self-inflicted injuries

[99] The plaintiff relies on the police and medical evidence that the death was accidental. The defendant points to suspicious circumstances suggesting the death may have been self-inflicted or resulted from reckless behaviour.

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[100] Clause 2.4.1(c) excludes payment for accidental death that is directly or indirectly caused by 'attempted suicide or self-inflicted injuries while sane or insane'. This is a serious allegation requiring clear and convincing evidence.

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[101] The defendant cites several circumstances it considers suspicious: (a) the certificate was obtained just 20 days before the deceased's death; (b) the WhatsApp conversations between the deceased and PW1 (the agent) show the deceased asked about coverage for falling from heights; (c) the deceased obtained coverage for RM3m in total; (d) the deceased had alcohol and Chloroquine in his system when he allegedly went to service an air-conditioning unit; and (e) the plaintiff was able to lodge a claim on the day of the deceased's death despite claiming to have no prior knowledge of the certificate.

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[102] Upon careful consideration, I find these circumstances insufficient to establish attempted suicide or self-inflicted injuries. Many individuals purchase takaful coverage as part of prudent financial planning, and the timing, while arguably coincidental, is not definitive evidence of suicidal intent. The WhatsApp conversations, read in context, show a natural concern about coverage for various accident scenarios rather than premeditation. The amount of coverage, while substantial, was not inherently suspicious given the deceased's declared income (even if that declaration was false).

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- A [103] More significantly, the official cause of death as determined by PW4, the post mortem doctor, was ‘multiple injuries due to fall from height’ without any suggestion of suicide. PW5, while not the investigating officer, confirmed that the police investigation classified the death as accidental.
- B [104] While the defendant correctly notes limitations in PW5’s testimony, this does not transform absence of evidence into evidence of suicide or self-infliction. The burden of proving the application of this exclusion clause rests with the defendant, not with the plaintiff to disprove it.
- C [105] The defendant’s suggestion that servicing an air-conditioning unit on the 17th floor without safety equipment constitutes ‘reckless behaviour’ amounting to ‘self-inflicted injuries’ stretches the ordinary meaning of these terms beyond their natural interpretation. ‘Self-inflicted injuries’ typically
- D refers to intentional self-harm, not reckless or negligent behaviour that results in accidental injury.
- E [106] Even if the deceased acted negligently in servicing his air conditioner without proper safety precautions, this would not constitute ‘self-inflicted injuries’ within the meaning of cl 2.4.1(c). To hold otherwise would potentially exclude coverage for a wide range of accidents involving some degree of contributory negligence, which would undermine the very purpose of accidental death coverage.
- F [107] On balance, I find that the defendant has not established that the deceased’s death was caused by attempted suicide or self-inflicted injuries within the meaning of cl 2.4.1(c) of the certificate.
- G *Payment of khairat benefit*
- H [108] The plaintiff argues that the defendant’s payment of the *khairat* benefit amounting to RM3,113.51 constitutes an admission that the certificate is valid and enforceable. The defendant contends that the *khairat* benefit was paid on a without prejudice basis pending investigation.
- I [109] Clause 7.3.2 of the certificate clearly states that the *khairat* benefit ‘will be payable upfront as long as the claimant submits the death certificate and/or other evidence satisfactory to us without the need to process the death claim first. The admittance of this benefit does not guarantee that the Death benefit will be payable’.
- [110] Furthermore, the plaintiff himself admitted during cross-examination that he understood the *khairat* benefit payment did not automatically mean the

rest of the claim would be paid (notes of evidence dated 7 May 2024, pp 97–98). A

[111] I therefore find that the payment of the *khairat* benefit does not estop the defendant from avoiding the certificate or declining the death claim. B

Failure to submit required documents

[112] The defendant argues that the plaintiff failed to provide additional documents requested under cl 12.7.1 of the certificate. The plaintiff contends that the documents requested were unreasonable and should have been asked for at the application stage. C

[113] Clause 12.7.1 of the certificate provides that ‘Before We pay any claim under this certificate, We may request for additional document(s) including legal documents to process and approve the claim’. D

[114] The evidence shows that the defendant made several requests for additional documents to support the claim (see the defendant’s letters dated 2 September 2020, 18 October 2020, and 17 November 2020 at pp 34–35, 39–42/Bundle B1). The plaintiff failed to provide these documents. E

[115] While I accept that the plaintiff may not have had access to all the requested documents, particularly given that he was not the deceased’s heir but merely a nominee under the certificate, his failure to make reasonable efforts to obtain and provide the requested documents constitutes a breach of cl 12.7.1. F

[116] Therefore, even if the certificate had been valid and the claim had not been excluded, the defendant would have been justified in not processing the claim due to the plaintiff’s failure to comply with cl 12.7.1 G

Adverse inference under s 114(g) of the Evidence Act 1950

[117] The plaintiff submitted that adverse inference should be drawn against the defendant under s 114(g) of the Evidence Act 1950 for multiple failures to produce evidence. First, regarding Miss Sok Kwan, the plaintiff argued that DW5 testified that ‘underwriting review and approval done by Miss Sok Kwan’, directly contradicting DW4’s evidence that she was the highest authority who approved the certificate. The plaintiff contended this contradiction was ‘glaring’ and raised questions about DW4’s credibility and authority. H I

[118] Second, regarding documentary evidence, the plaintiff argued that the defendant failed to produce: (a) PricewaterhouseCoopers (‘PwC’)

A investigation findings, despite PW1 testifying she was investigated by PwC;
B (b) Anti-Money Laundering ('AMLA') screening results, despite DW4 mentioning such screening was conducted; (c) Standard Operating Procedures ('SOP') for the Underwriter Department, despite DW4 referencing such procedures; and (d) written underwriting decisions, despite DW5 confirming that decisions were 'recorded in the system' with reasons stated. The plaintiff submitted that all this evidence, if produced, would be unfavourable to the defendant and demonstrated a pattern of withholding material evidence.

C [119] The defendant submitted that the plaintiff's attempt to draw adverse inference was 'futile' and 'inexplicable'. Regarding Miss Sok Kwan, the defendant argued that DW4 testified on oath that she was the highest authority for the underwriting at the material time and was not challenged on her authority, making Miss Sok Kwan's testimony immaterial. The defendant distinguished between underwriting and claims processes, arguing that the plaintiff was conflating two different stages handled by separate departments.

E [120] Regarding the missing documents, the defendant contended that the plaintiff failed to establish that such documents existed in writing or demonstrate their materiality. The defendant argued that: (a) internal SOP would not constitute an actionable cause of action even if breached; (b) DW4's oral testimony provided the best evidence regarding underwriting decisions; (c) PwC findings would be mere hearsay given that PW1 testified in person; and (d) the underwriter's decision manifested in the certificate's issuance. The defendant cited *Munusamy v Public Prosecutor* [1987] 1 MLJ 492 (SC) to support the proposition that s 114(g) should not be 'carried too far outside its limit'.

G [121] The court must establish the proper scope and application of s 114(g) of the Evidence Act 1950. As emphasised by Mohamed Azmi SCJ in *Munusamy Vengadasalam*: 'It is essential to appreciate the scope of s 114(g) lest it be carried too far outside its limit. Adverse inference under that illustration can only be drawn if there is withholding or suppression of evidence and not merely on account of failure to obtain evidence. It may be drawn from withholding not just any document, but material document by a party in his possession, or for non production of not just any witness but an important and material witness to the case'. This principle requires the court to distinguish between legitimate exercise of discretion in case presentation and improper suppression of material evidence.

I [122] The plaintiff has fundamentally failed to meet the threshold requirements for drawing adverse inference. The *Munusamy Vengadasalam* principle requires the plaintiff to first establish that the complained evidence exists and is material to the issues. The plaintiff has merely speculated about the

existence of formal documentation based on testimony that certain processes were conducted, without demonstrating that written records were created, maintained, or are in the defendant's possession. This falls short of the standard required, which demands actual withholding of existing material evidence rather than failure to obtain or create evidence.

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[123] Regarding Miss Sok Kwan specifically, the court finds that her testimony would not be material to the substantive issues. DW4 (Iman bt Azmi) provided clear and unequivocal testimony that she was the highest authority for this particular underwriting decision, stating: 'This case is within my authority ... Yes, for this case ... No, we don't need peer review'. This evidence was not challenged during cross-examination, and DW4's authority was not disputed by the plaintiff. The court accepts the defendant's submission that there is a critical distinction between the underwriting process (handled at the proposal stage) and the claims assessment process (handled post-death). DW4 was the underwriting authority who made the decision to issue the certificate, while DW5 was a claims manager reviewing the matter retrospectively. Any reference by DW5 to Miss Sok Kwan's involvement does not necessarily contradict DW4's evidence about her own decision-making authority, as these witnesses were addressing different stages and departmental processes.

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[124] On the PwC investigation findings, the evidence shows that PW1 was interviewed by PwC, but the court finds that the defendant's failure to produce PwC's findings does not warrant adverse inference. As correctly submitted by the defendant, PW1 testified in person at trial, providing the best evidence regarding the matters she discussed with PwC. Any written findings would constitute hearsay evidence of lesser probative value. More importantly, since PW1 was the plaintiff's own witness, the plaintiff had full opportunity during examination-in-chief to elicit any relevant information from PW1 about her interactions with PwC investigators. The fact that the plaintiff did not seek to adduce evidence of any discrepancies between PW1's knowledge and what she told PwC suggests that the PwC findings would not materially assist the plaintiff's case or contradict the evidence already before the court.

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[125] In respect of the AMLA screening results, DW4 testified that AMLA screening was conducted and concluded that 'for this case we didn't see any money laundering issue' and it 'didn't trigger AMLA'. The absence of formal documentation is immaterial since the substantive result — no money laundering concerns identified — was disclosed through testimony. The proposal was processed normally without requiring compliance department referral, supporting rather than undermining the defendant's position that proper procedures were followed.

I

- A [126] On the SOPs, while DW4 acknowledged the existence of SOPs, the court finds their absence immaterial to the substantive legal issues. The defendant correctly submits that even if adherence to internal SOPs were proven lacking, this would not constitute an actionable cause of action for the plaintiff. Internal procedures are matters of corporate governance rather than legal obligations to policyholders. DW4's detailed testimony about the actual underwriting process provides sufficient evidence, making formal SOP documentation cumulative rather than essential.
- B
- C [127] Regarding the written underwriting decisions, though DW5 mentioned that decisions are 'recorded in the system,' the court finds that the defendant's approval decision is conclusively evidenced by the certificate's issuance itself. The plaintiff has not disputed the certificate was issued nor suggested any written decision would contradict DW4's sworn testimony. The absence of written records creates no evidential gap warranting adverse inference.
- D
- E [128] The plaintiff has failed to demonstrate how any missing evidence would be material to the central legal issues: whether the deceased made material misrepresentations and whether those misrepresentations induced the certificate's issuance. The core facts — certificate issuance, proposal form representations, and subsequent investigation revelations — are established through other evidence. None of the missing evidence would alter the legal analysis of misrepresentation materiality or inducement.
- F
- G [129] The evidence does not suggest deliberate suppression of existing documents. Rather, the defendant chose not to adduce internal documentation that was either cumulative of oral testimony (PwC findings, written decisions) or irrelevant to legal issues (SOP, AMLA details). This falls within legitimate case presentation discretion rather than improper withholding under the *Munusamy Vengadasalam* principle.
- H [130] The court finds compelling grounds for adverse inference against the plaintiff, who failed to produce documentation evidencing the deceased's claimed business activities or income despite claiming intimate knowledge of his affairs. This mirrors the principle in *Great Eastern Life Assurance (Malaysia) Bhd v Poobalan all Rajah*, where failure to adduce evidence of declared income despite knowing inconsistencies had been pleaded operated against the defendant. The plaintiff's complete absence of business documentation, despite claimed partnership with the deceased, makes adverse inference equally compelling here.
- I

[131] For these reasons, the court finds that the plaintiff's arguments for adverse inference regarding both Miss Sok Kwan and the missing documents

lack merit. The plaintiff has failed to establish that this evidence would be material to resolving the legal issues, has not demonstrated that the contents would differ from oral testimony provided, and has not shown improper withholding rather than legitimate case presentation choices. The court is satisfied that the evidence before it sufficiently determines the substantive issues without requiring adverse inferences regarding the complained evidence.

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CONCLUSION AND ORDER

[132] In conclusion, I find that:

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- (a) the deceased made deliberate or reckless misrepresentations of material facts in the proposal form, specifically regarding his annual income and occupation/company;
- (b) these two misrepresentations, though fewer than alleged by the defendant, were sufficiently material to entitle the defendant to avoid the certificate ab initio under para 15(1) Schedule 9 of the IFSA and cll 12.1.4, 12.8.2, and 12.8.3 of the certificate;
- (c) the defendant has not established that the deceased misrepresented the source of the takaful contribution or his alcohol consumption;
- (d) the defendant has not proven that any of the exclusion clauses under cll 2.4.1(f), 2.4.1(h), or 2.4.1(c) of the certificate apply in this case; and
- (e) the plaintiff's failure to provide some requested documents is understandable given his status as merely a nominee rather than the deceased's heir, and does not by itself justify rejection of the claim.

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[133] Although the defendant did not establish all elements of its defence, the two material misrepresentations regarding annual income and business entity are sufficient grounds to void the certificate ab initio. The duty of utmost good faith is fundamental to takaful contracts, and the deceased's misrepresentations on these two material points constituted a breach of this duty.

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[134] For these reasons, the plaintiff's claim is dismissed with costs of RM25,000 to the defendant.

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Plaintiff's claim dismissed with costs of RM25,000 to defendant.

Reported by Dzulqarnain Ab Fatar

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